

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1152 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SANTOSHKUMAR AVADHNARAYAN PANDE

Versus

THE STATE OF GUJARAT,

Appearance:

MR HR PRAJAPATI for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Surat City, Surat, passed an order on July 13, 1999, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Santoshkumar Avadhnarayan Pande, under the provisions of

the PASA Act.

#. For detaining the detainee, the detaining authority took into consideration four offences registered against the detainee besides the statements of two anonymous witnesses in respect of whom, powers under section 9(2) of the PASA Act were exercised by not disclosing the identity of these witnesses. The detaining authority recorded satisfaction about the detainee being dangerous person and about his activities being detrimental to public order. After considering less drastic remedies, the detaining authority passed the order of detention.

#. The detainee challenges the order of detention on various grounds. However, Mr. Prajapati, learned advocate for the petitioner has pressed only the ground of delay in forwarding the representation made on behalf of the detainee, by the detaining authority. He submitted that the representation was made on behalf of the detainee on February 18, 2000 to the detaining authority. The same was received by the detaining authority on February 21, 2000 and the detaining authority, in turn, forwarded the same to the government on February, 29, 2000. Thus, there was a gap of about 8 days between the dates of the receipt and forwarding the representation which has not been explained. Mr. Prajapati submitted that the detaining authority was aware that the order is approved on July 21, 1999 and therefore, he is only required to forward the representation for which he has taken 8 days, which has affected the right of the detainee of making an effective representation and continued detention, therefore, would be vitiated.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He however, does not dispute the dates stated by Mr. Prajapati.

#. Mr. Prajapati places on record original communication received from the detaining authority which indicates that the representation dated 18th February, 2000 was received by the detaining authority on 21st February, 2000 and the detaining authority forwarded the same on 29th February, 2000 to the government. There is a gap of 8 clear days between the date of receipt and date of forwarding the representation. Once the order of detention is approved by the government, the detaining authority becomes functus officio and all that is required to be done by the authority is to forward the representation expeditiously and without delay. The detaining authority has failed in forwarding the representation immediately. This can be said to have

infringed the right of making an effective representation. As stated at the bar by Mr. Dave, the representation was decided by the government on March 7, 2000. Thus, there is infringement of the right of the detainee, which would vitiate the continued detention of the detainee. The petition, therefore, deserves to be allowed on this ground alone.

#. The petition is allowed. The impugned order of detention dated July 13, 1999 is hereby quashed and set aside. The detainee - Santoshkumar Avadhnarayan Pande is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-